

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Gregory Kelly,

Plaintiff
v.
Jody Marie Cuomo,

Defendant

Case No.: 2:18-cv-00923-JAD-VCF

**Order Sustaining in Part Plaintiff's
Objection and Remanding Matter to
Magistrate Judge**

[ECF Nos. 36, 60, 90]

This judgment-enforcement action stems from plaintiff Gregory Kelly's prolonged attempt to collect a debt from bankrupt debtor Jody Cuomo. Kelly has engaged in copious amounts of discovery to determine whether Cuomo has assets that could be used to satisfy the debt. At issue here is one of those discovery attempts: a subpoena to the company Medicavelli Inc., of which Cuomo was the treasurer. Kelly objects to the magistrate judge's denial of his motion to enforce this subpoena. In the interests of justice I sustain his objection in part and remand this matter to the magistrate judge to consider arguments made for the first time in Kelly's objection and substantially similar arguments in motions currently pending before the magistrate judge.

Background

This action to enforce judgment stems from a \$96,000 loan that non-party Patricia Ritchie made to defendant Jody Marie Cuomo in 2006.¹ When Cuomo filed for bankruptcy in 2010, she neglected to list that loan in her schedules.² Ritchie later assigned her interest in the loan to plaintiff Gregory Kelly, who then filed an adversary proceeding against Cuomo in the

¹ ECF No. 82 at 2.

² *Id.*

1 bankruptcy case seeking to exempt the loan from discharge.³ After a trial, the bankruptcy court
2 ruled that the loan was not dischargeable in bankruptcy and entered judgment for Kelly and
3 against Cuomo for the loan amount plus interest.⁴

4 Kelly conducted a judgment-debtor examination of Cuomo as part of his efforts to collect
5 and learned that Cuomo was listed as the treasurer of Medicavelli Inc., a medical company that
6 was solely owned by Cuomo's romantic partner Frank Silver, M.D.⁵ Cuomo testified that,
7 though she was listed as the treasurer, she was merely a figurehead and had no real role in the
8 company.⁶ She also testified that Medicavelli did not pay her a salary, but Silver paid all of her
9 expenses, including her legal fees, and may have done so through a Medicavelli account.⁷ Kelly
10 formed the opinion that Silver was improperly paying Cuomo's expenses through Medicavelli
11 accounts instead of giving her a paycheck that could then be considered income and used to pay
12 down her remaining debts.⁸

13 In this follow-up action to collect on the bankruptcy judgment, Kelly obtained subpoenas
14 for Medicavelli, Silver, and the attorneys that represented Cuomo in her bankruptcy proceedings,
15 seeking corporate documents, employment agreements, bank statements, and other
16 documentation concerning whether Cuomo was using Medicavelli accounts to pay her personal
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20 ³ *Id.*

21 ⁴ ECF No. 1 at 2–3; ECF No. 4 at 5–6.

22 ⁵ *See generally* ECF No. 36-1 at 15–41 (judgment-debtor examination transcript).

23 ⁶ *Id.* at 19.

⁷ *Id.* at 20, 25–26, 29–30, 37–38.

⁸ *See id.* at 33.

1 expenses.⁹ Medicavelli did not respond to the subpoena within the deadline,¹⁰ and the law firms
2 objected to their subpoenas, claiming that attorney-client privilege prevented them from turning
3 over the requested documents.¹¹ Kelly responded with motions to enforce those subpoenas,
4 arguing that he believed that Cuomo was hiding funds in Medicavelli accounts that should be
5 part of her bankruptcy estate.¹² Medicavelli responded to Kelly's motion, arguing only that the
6 subpoena was improperly served.¹³

7 Magistrate Judge Ferenbach held a hearing on the motions and denied them all, finding
8 that "the information requested is mostly not relevant to collecting the judgment registered on the
9 docket" and "to the extent that some of the information requested might be relevant, the
10 discovery . . . would be either duplicative or not proportional."¹⁴ Cuomo appealed Judge
11 Ferenbach's decision with respect to the Medicavelli subpoena to the Ninth Circuit, which
12 dismissed the appeal as premature because Judge Ferenbach's order was not dispositive.¹⁵ At the
13 Ninth Circuit's suggestion, I resurrected Cuomo's appeal as an objection to a magistrate order
14 and directed Medicavelli to file a response to the objection.¹⁶ That objection is the focus of this
15 order.

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18 ⁹ ECF No. 18 (Medicavelli subpoena); ECF No. 22 (Keating Law Group PC subpoena); ECF No.
19 28 (Prince and Keating, LLP subpoena). Kelly pursued many other subpoenas as well, but those
20 are not at issue here.

21 ¹⁰ ECF No. 51 (notice of non-opposition).

22 ¹¹ See ECF No. 38; ECF No. 39.

23 ¹² ECF No. 32; ECF No. 33; ECF No. 36.

¹³ ECF No. 59.

¹⁴ ECF No. 60; ECF No. 68 (hearing transcript).

¹⁵ ECF No. 69.

¹⁶ ECF No. 78 at 6–9.

1 Judge Ferenbach determined that the Medicavelli subpoena was irrelevant,
2 disproportionate, and duplicative and thus denied Kelly's motion to enforce it. But he lacked the
3 benefit of the parties' briefing on the relevant state and federal law concerning post-judgment
4 discovery for nonparties.²⁶ Not until its response to Kelly's objection did Medicavelli cite
5 relevant, potentially controlling state law concerning the collection of information from
6 nonparties who may have relationships with a judgment debtor.²⁷ That new authority directs the
7 court to focus on whether "the relationship between the judgment debtor and the nonparty is
8 sufficient to raise a reasonable doubt about the bona fides of the transfer of assets between them
9 . . . or whether the nonparty is the alter ego of the judgment debtor."²⁸ That issue wasn't
10 sufficiently briefed before Judge Ferenbach when he made his ruling. And the intricacies of this
11 issue were also fully briefed for the first time in Silver's motions to quash and for a protective
12 order, which remain pending before Judge Ferenbach. So, because the parties presented
13 arguments to me that were not presented to the magistrate judge, and because there are
14 substantially similar issues pending before Judge Ferenbach concerning the Silver subpoena, I
15 grant Kelly's objection in part and remand this matter back to the magistrate judge to reconsider
16 Kelly's motion to enforce the Medicavelli subpoena with the benefit of this new authority and in
17 conjunction with Silver's yet-unresolved motions to quash and for a protective order.

18 Conclusion

19 **IT IS THEREFORE ORDERED** that plaintiff Gregory Kelly's objection [ECF No. 90]
20 **to the magistrate judge's order at ECF No. 60 is SUSTAINED in part.** In the interests of
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22 ²⁶ See ECF No. 36; ECF No. 59.

23 ²⁷ ECF No. 91 at 9 (citing *Rock Bay, LLC v. Dist. Ct.*, 298 P.3d 441, 445–46 (Nev. 2013)).

²⁸ *Rock Bay*, 298 P.3d at 445 (cleaned up).

1 justice, **this matter is REMANDED to the magistrate judge** to reconsider Kelly's motion at
2 ECF No. 36 in light of the briefing presented in the objection and response and the similar issues
3 raised in ECF Nos. 77, 78, 79, and 80.

4 **IT IS FURTHER ORDERED** that the **Clerk of Court is directed to administratively**
5 **revive ECF Nos. 77, 78, 79, and 80 and refer them to the magistrate judge.**

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U.S. District Judge Jennifer A. Dorsey
November 30, 2022